

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6525 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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AMIRALI RAJABALI JAMANI

Versus

DISTRICT MAGISTRATE

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Appearance:

MR VIJAY H PATEL for Petitioner  
Mr.Nigam Shukla, learned Asst.G.P. for the  
respondents Nos.1,2 and 4.  
Mr.Sunil C.Patel, learned Addl.Central Govt.Standing  
counsel for the respondent No.3.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/11/96

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ORAL JUDGMENT :

1. This Special Civil Application is directed against the order dated 5-8-96 passed by the District Magistrate, Bhavnagar whereby the petitioner has been detained under the provisions of the Prevention of Black

Marketing and Maintenance of Supplies of Essential Commodities Act,1980 (hereinafter referred to as 'the Act'). The detention order was executed on 7-8-96 and since then the petitioner is under detention lodged at Bhuj Special Jail, Bhuj.

2. This Special Civil Application was filed on 29-8-96 and on 30-8-96 Rule returnable on 27-9-96 was issued. On behalf of the respondents an affidavit-in-reply dated 25-9-96 has been filed under the signatures of Shri K.S. Vaghela, Under Secretary to the Government of Gujarat, Food and Civil Supplies Department and a counter affidavit on behalf of Union of India dated 23-9-96 has been filed.

3. According to the grounds of detention enclosed with the detention order, the petitioner has been found to be involved in the black marketing of the kerosene oil, converting the blue kerosene oil to white kerosene and selling the same at inflated rates, which was otherwise meant to be sold out to the bonafide consumers. Accordingly the detention order was passed.

4. The learned counsel for the petitioner has challenged the detention order inter alia on the ground that the representation had been made by him on 12-8-96 and although the order of detention had been approved by the Government on 12-8-96 the detaining authority yet proceeded to reject the petitioner's representation on 16-8-96. However, this contention is of no avail because the representation had also been rejected by the State Government on 21-8-96. The next contention raised by the petitioner is that his representation dated 12-8-96 had been sent to the Central Government and the rejection thereof was communicated on 9-9-96. He has submitted that there is no explanation whatsoever for the period on and from 22-8-96 to 9-9-96. The reply which has been filed by the Union of India shows that even parawise contents of the statements had been received by the Central Government on 22-8-96. It has been then stated that the representation was examined and the same was rejected by the Competent Authority in the Ministry and the decision of the Central Government was conveyed to the Superintendent, Special Jail, Bhuj on 9-9-96. Besides saying so, no explanation whatsoever has been given in the reply for the period of 19 days i.e. from 22-8-96 to 9-9-96. In the facts of this case, when the delay for a period of 19 days itself remains wholly unexplained and not a word has been said about this delay in deciding the representation, it is clear that the petitioner's right of effective representation under

Article 22(5) of the Constitution of India has been infringed on account of this inordinate and unexplained delay and in the facts of this case, this delay in deciding the representation appears to be fatal to the continuance of the detention order. Accordingly even if the detention order was valid at the time when it was passed, the continued detention of the petitioner is rendered illegal and unwarranted on account of the violation of the petitioner's right under Article 22(5) of the Constitution of India.

5. Accordingly the Special Civil Application is allowed and the impugned detention order dated 5-8-96 passed by the District Magistrate, Bhavnagar is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.